

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

JAMES T. FISHER,)	
)	
Petitioner,)	
)	
v.)	No. CIV-04-1764-L
)	
JOHN WHETSEL, et al.,)	
)	
Respondents.)	

ORDER

This matter is before the court for review of the Report and Recommendation entered by United States Magistrate Judge Gary M. Purcell on January 14, 2005, in which he recommended that the petition for writ of habeas corpus be denied based to the doctrine enunciated in Younger v. Harris, 401 U.S. 37 (1971). In his timely filed objections, petitioner attempts to demonstrate that his case falls within an exception to the *Younger* abstention doctrine.

Pursuant to 28 U.S.C. § 636(b), the court must “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” In accordance with this mandate, the court has reviewed the Report and Recommendation, petitioner’s objections thereto and the case file. Based on this review, the court concludes that the Magistrate Judge correctly determined that *Younger* abstention applies. Petitioner’s conclusory

statements do not demonstrate that the prosecution against him constitutes harassment or was undertaken in bad faith.

The court takes judicial notice that defendant was retried before a jury beginning on April 11, 2005 and that a verdict of guilty was returned on April 14, 2005. On April 18, 2005, the jury returned its verdict recommending a sentence of death. State v. Fisher, Case No. CF-1983-137 (Okla. County filed Feb. 2, 1983) (docket sheet found at <http://www.oscn.net/applications/oscn/casesearch.asp>). Sentencing is currently set for April 28, 2005. Id. The court finds that petitioner has an adequate forum to litigate any constitutional claims regarding the retrial either on direct appeal or via a subsequent collateral action.¹

The Petition for Writ of Habeas Corpus (Doc. No. 1) is DENIED. Judgment will issue accordingly.

It is so ordered this 27th day of April, 2005.


TIM LEONARD
United States District Judge

¹To the extent the Report and Recommendation indicated that petitioner could raise such issues in Fisher v. Gibson, Case No. CIV-93-1888-L (W.D. Okla. filed Oct. 26, 1993), it was in error.